THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION Nos.18884 and 25715 of 2007

Dated: .12.2007

W.P.No.18884 of 2007:

Between:

Yerramala Maddulety.

…Petitioner.

and

The Joint Collector, Kurnool, Kurnool District and two others.

…Respondents.

W.P.No.21715 of 2007:

Between:

Berry Anasuyamma.

…Petitioner.

and

The Commissioner, and two others.

…Respondents.

THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION Nos.18884 and 25715 of 2007

COMMON ORDER:

In W.P.No.18884 of 2007, this Court ordered notice before admission on 10.09.2007 and granted interim direction until further orders. On 24.09.2007, this Court issued Rule nisi.

2. The writ petition is filed for a writ of *Mandamus* declaring the action of the respondents in issuing two letters vide Rc.No.100/2007,

dated 17.08.2007, and occupying the petitioner's temple, as illegal, arbitrary, unconstitutional, in violation of principles of natural justice and in violation of the provisions of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (hereinafter referred to as "the Act", for the purpose of convenience) and to set aside the same.

3. W.P.M.P.No.31052 of 2007 was filed to permit the petitioner to incorporate the proceedings of respondent No.2 in Rc.No.A/4989/2007, dated 18.08.2007, in the relief portion of the writ petition and the said application was ordered by this Court by order on 07.12.2007. A

counter-affidavit is filed by the 2nd respondent.

4. May be in the light of the stand taken by the respondents in the said writ petition, the writ petitioner filed another W.P.No.25715 of 2007 praying for the relief of *Certiorari* to call for the entire records pertaining to proceedings vide Rc.Nos.J3/23580/93 and J3/791/2006, dt.13.08.1993 and 21.01.2006, of the 2nd and 3rd respondents, respectively, and to quash the same by declaring that those proceedings were issued in violation of the principles of natural justice, and in violation of Article 21 of the Constitution of India and also in violation of the provisions of the Act and to pass such other suitable orders.

5. This Court issued Rule nisi on 04.12.2007 in W.P.No.25715 of 2007. Though no separate counter-affidavits had been filed in this writ petition, learned Government Pleader for Endowments submitted that since already a counter-affidavit, in detail, had been filed in the former W.P.No.18884 of 2007, both the matters be disposed of by a common order. Hence, both these writ petitions are being disposed of by a common order, by this Court, after hearing the learned counsel on record.

6. Sri T.D.Phani Kumar, learned counsel representing the writ petitioner, had taken this Court through the contents of the affidavits

filed in support of the writ petitions and would maintain that the original notifications said to have been issued notifying the temple in question either under Section 6(b) or 6(c) of the Act had not been within the knowledge of the writ petitioner, at any point of time, till her management had been disturbed. Learned counsel also would submit that the stand taken by the respondents relating to the voluntary handing over of the charge of the temple is totally unsustainable stand and that the temple is a private temple and not a public temple, and it was never under the control of the Endowments Department. Learned counsel also had specifically denied the other contentions raised in the counter-affidavit and further had taken this Court through the relevant material papers and the contents of the reply-affidavit as well.

7. On the contrary, learned Government Pleader for Endowments would maintain that in the light of Section 1(3) of the Act, there cannot be any doubt whatsoever about the power of the Endowments Department to interfere with the management of the temple in question. Whether it is a registered temple or not under the provisions of the Act, it is the duty of the Commissioner of Endowments to identify it, and these notifications had been published in gazettee long back, and after a long lapse of time, now the writ petitioner cannot be permitted to question the same. Learned Government Pleader also had drawn the attention of this Court to Sections 65, 66, 87 and 148 of the Act and would maintain that even if the temple in question is to be reclassified, the Commissioner of Endowments may have to take appropriate decision, in this regard. Learned Government Pleader also had placed relevant records and would maintain that the conduct of the petitioner had led to all this controversy and the petitioner had to be blamed for the present state of affairs. Learned Government Pleader ultimately would conclude that the writ petitions are liable to be dismissed, giving liberty to the writ petitioner to agitate her rights, if any, by making appropriate applications before the concerned competent authority under the provisions of the Act.

8. Heard the learned counsel and perused the records.

9. Impugned proceedings, dated 17.08.2007, issued by the 3rd respondent, read as under:

"Office of the Inspector,
Endowments Department, Visakhapatnam.

Rc.No.100/2007, Dated:17.08.2007

To
Kum.B.Anasuyamma,
Person-in-Management,
Sri Venkateswara Swamy Temple,
Lawsonsbay Colony,
Pedawaltair,
Visakhapatnam.

Madam,

Sub: Endowments Department – Visakhapatnam Town & District – Sri Venkateswara Swamy Temple, Lawsonsbay Colony, Pedawaltair – production of rendering accounts and records – called for – Regarding.

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I am to inform you that Sri Venkateswara Swamy Temple, Lawsonsbay Colony is a public religious institution published under Section 6(b)(ii) of the A.P.Ch.H.R.I., & Endowments Act 30/87 and thus the institution in question is governed with provision of the A.P.Ch.H.R.I., & Endowments Act 30/87.

As per the provisions under Section 57 (1)(ii) of the Act 30/87 every Trustee of Religious or Charitable institution shall submit budget estimate 90 days before the commencement of financial year to the Deputy Commissioner, Endowments Department, Visakhapatnam. But so far no submitted budget estimate and income return in respect of the subject institution.

You are requested to immediately submit budget estimate and income return relating to the subject institution. You are also requested to render accounts in respect of the above institutions for verification.

Yours faithfully,
Inspector
Endowments Department,
Visakhapatnam.

Copy submitted to the Deputy Commissioner, Endowments Department, Visakhapatnam.
Copy submitted to the Assistant Commissioner, Endowments Department, Visakhapatnam."

10. In W.P.No.18884 of 2007, it is averred in para 3 of the affidavit filed in support of the writ petition that the petitioner was a retired Scientific Officer in Ministry of Food and Agriculture, Government of U.K., Toliworth, Surrey at England. She came back to India in the year 1974 and purchased a land to an extent of 1842 sq.yds., in Sy.No.38 of Chinna Waltheru, Visakhapatnam, through a sale deed, dated 7.1.1975, and registered in the office of the Joint Sub-Registrar, Visakhapatnam, as document No.63/75, from the Town Planning Trust, Visakhapatnam, for the purpose of constructing a temple therein, and the said sale deed had been placed before this Court. Thereafter, the petitioner constructed
Sri Venkateswara Swamy Temple in an extent of 1100 sq.yds., of land, including the rooms for her residence, with her own funds, and since then she had been maintaining the temple with her pension and retirement benefits, and she had been residing there itself and she never offered any donations from the public for maintaining the temple.

11. It is further submitted that Sri Venkateswara Swamy Temple is purely private temple constructed by the petitioner and maintaining the same with her own funds to render service to the God. Since construction of the temple, the petitioner never made any payments to the respondents as contribution, and at the same time the respondents never interfered with the activities of temple administration and never served any notice on her under the provisions of the Act.

12. The petitioner had taken a specific stand that the earnings of the temple would be less than Rs.3,000/- per month. While she had been maintaining the temple in a peaceful manner, on 17.1.2007, the respondents, being Government servants, came along with some unknown persons, forcibly entered into the temple at about 7.30 p.m., and shouted on the watchman in filthy language and ordered to vacate and handover the temple to the department and served two letters upon him, wherein it was stated that the temple was published under

section 6(b)(ii) of Act, and thus, the temple is governed under the provisions of the Act and further stated that as per Section 57(1) and (2) of the Act, every trustee of Religious and Charitable Institution should submit budget estimates 90 days before the commencement of the financial year to the Commissioner of Endowments. But, so far, the petitioner had not submitted any budget estimates and income tax returns, in respect of the temple, and as such, she was directed to submit the same for verification and on the same day, the 3rd respondent issued another letter surprisingly stating that the petitioner was due of the contribution, audit fee, common good fund for 1993-94, an amount of Rs.1742/-; for 1995-96, an amount of Rs.1572/-; for 2002-03, an amount of Rs.1500/-; for 2003-2004, an amount of Rs.1500/- and for 2004-2005, due of contribution was Rs.9,000/-, audit fee Rs.900/-, and common good fund Rs.1800/- and similarly for the year 2005-2006. The letters issued by the 3rd respondent had been placed before this Court.

13. Further, it is stated that on 18.08.2007, the 3rd respondent again entered into the temple along with unofficial persons and the petitioner explained him in detail that no proceedings had been initiated for acquiring the temple under the Act and she requested sometime to submit her explanation to the two letters, dated 17.8.2007. The

3rd respondent without hearing the petitioner had obtained her signature on the statement prepared by him, without her consent. The action of the 3rd Respondent is high-handed, illegal and in violation of the principles of natural justice.

14. It is also stated that though the petitioner made representations to respondents 1 and 2 for evicting the 3rd respondent, respondents 1 and 2 had not taken any action. Copies of telegraphic notices, legal notices, and police complaint had been placed before this Court.

15. Under these circumstances, the writ petitioner approached this Court praying for appropriate reliefs and also obtained interim direction as already specified supra.

16. In the counter-affidavit filed by the 2nd respondent, the purchase of the property by the petitioner is, no doubt, not controverted. But, however, the maintenance of the temple with her own funds had been denied. It is stated that the petitioner is collecting the following rusums in the temple from the visiting devotees.

Sl. No.	Nature of Tickets	Rate of Ticket Rs.
1.	Darsanam	5/-
2.	Abisekham	10/-
3.	Palabhisekham	30/-
4.	Rudrabhisekham (inside)	216/-
5.	Rudrabhisekham (outside)	116/-
6.	Sanitrayodasi	100/-
7.	Santhosimatha Vudyapana	200/-
8.	Adsharabyasam/Annaprasana	116/-
9.	Kalyanam	1116/-
10.	Suprabathaseva	80/-
11.	Monthly Pooja (Sivalayam)	100/-
12.	Saturday Prasadam (Pulihora - 5 Kgs) - 1 Kg	250/- 100/-
13.	Chakkera Pongali Prasadam - 5 Kgs - 1 Kg	500/- 150/-
14.	Menupongali Prasadam - 5 Kgs - 1 Kg	250/- 100/-
15.	Daddojanam - 5 Kgs - Kg	300/- 100/-
16.	Kesari - 5 Kgs - 1 Kg	500/- 150/-

The petitioner had swindled the above income without rendering accounts to the Department. In the letter, dt.18.8.2007, she herself had admitted that she had not rendered any accounts for the income realized from the temple and she requested the 3rd respondent to take possession of the temple, due to her old age. Accordingly, the 3rd respondent had submitted a report to the 2nd respondent. Considering the request of the petitioner, and the circumstances reported by the 3rd respondent, the management of the subject temple was entrusted to Sri Ch.Srinivasa Rao, Manager, Sri Vigneswara Swamy Temple by the 2nd respondent vide orders in Rc.No.A1/4989/2007, dt.18.8.2007.

Accordingly, the petitioner had handed over the charge of the temple to the Manager, and thus, he was managing the affairs of the institution. The petitioner suppressing the above facts filed the present petition before this Court.

17. It is submitted that the subject temple is a public religious institution initially published under Section 6(c)(ii) of Act 30/87 in the year 1993 and later, reclassified and published under Section 6(b)(ii) of Act 30/87 in the year 2006 vide Commissioner's orders in Rc.No.J3/791/2006, dt.21.1.2006. In addition to the main temple i.e., Sri Venkateswara Swamy Temple, there are 13 other sub-temples of different deities in the premises. Several tickets were introduced for different sevas such as darsanam, abhisekhams, udyapanas, monthly pooja and prasadams etc., and that the income derived from the above tickets and hundi collections were the main sources of income of the subject temple. Hence, the contention of the petitioner that she was maintaining the temple with her own funds without collecting any donations from the public had been denied.

18. It is further averred that the subject temple was published initially under Section 6(c)(ii) of Act 30/87, and as such, the same is not a private temple, but is a public religious temple and the said publication was never questioned by the writ petitioner. It is submitted that in spite of several demands by the respondents for payment of contribution to Endowments Administration Fund and Audit fees to the Government, she failed to pay the same.

19. Further, it is averred that as per the income returns filed by the petitioner for the year 1993-94, the total income was shown as Rs.1,14,557/-, and as the income was above Rs.50,000/- per annum continuously, the same was reclassified and published under Section 6(b)(ii) of the Act. It is also averred that the petitioner had failed to discharge her duties as a trustee and on the other hand, she started misappropriating the amounts of the temple and tried to sell away part of the temple premises to third parties.

20. It is further stated that when the 3rd respondent visited the temple and insisted the petitioner for rendition of accounts, she herself expressed her willingness to handover the temple to the Department for its better management. She addressed a letter, dated 23.10.2000, to the 1st respondent stating her willingness to merge the temple in Pushpagiri Mutt, in view of her age and other responsibilities. In the interest of the public service and better management of the temple the Manager, Sri Vigneswara Swamy Temple, Main Road, Visakhapatnam, was kept in full Additional Charge to the subject temple and accordingly, the petitioner had handed over the charge. A copy of the charge list also had been placed before this Court. The petitioner if aggrieved ought to have filed a petition under Section 92 of the Act before the Commissioner of Endowments, or a petition under Section 93 of the Act before the Government. Without invoking those remedies, the present writ petition had been filed.

21. Under those circumstances, the dismissal of the writ petition had been prayed for.

22. In the lengthy reply-affidavit filed, the stand taken in the affidavit filed in support of the writ petition again had been reiterated. In para 3 of the reply-affidavit, it is denied that the petitioner was collecting rusums; that she herself admitted in the letter, dated 18.08.2007 that she had not rendered any accounts; and that due to her old age, she was not in a position to maintain the affairs of the temple and requested the 3rd respondent to take possession and develop the same. The petitioner submitted that on 18.8.2007, the 3rd respondent visited the subject temple and had forcibly taken her signatures and had thrown out her from the temple premises.

23. The allegations that the 3rd respondent had submitted a report to the 2nd respondent; that the entrustment of the management of the temple to the Manager and that handing over of charge of the temple to the Manager had been denied. It is submitted that the

petitioner was maintaining the temple with her own funds only. The petitioner filed affidavits of the devotees, who regularly visit the temple, and they clearly stated that while the petitioner was maintaining the temple in peaceful manner, the respondents without any right, took possession of the same. Further, the averments that the subject temple is a public religious institution and that the income derived from the tickets and hundi collection are the main sources of income of the temple, had been denied. It is submitted that the respondents never initiated any proceedings under Section 6(c)(ii) of the Act with the knowledge of the petitioner. It is submitted that if any proceedings have to be initiated under the provisions of the Act, enquiry ought to have been conducted to verify whether the income of the temple comes under the purview of the Act. It is submitted that no proceedings or publication by fixing different prices for different sevas were taken place at the earlier point of time. If any proceedings are initiated, the respondents would have submitted all the records before this Court, but they did not do so.

24. As to how interference was made by the respondents had been averred in para 5 of the reply-affidavit. Relating to the income particulars several allegations were made and specific stand had been taken that the petitioner was not an income tax assessee.

25. The allegations raised by the 2nd respondent that the petitioner had misappropriated the temple amounts and tried to sell away part of the temple premises to third parties; that she expressed her willingness to merge the temple in Pushpagiri Mutt had been denied. The other allegations made in para 6 of the counter-affidavit filed by the

2nd respondent are also denied by the petitioner.

26. In reply to para 7 of the counter, it is submitted that though the petitioner requested time for reply, the 3rd respondent on 17.8.2007 served a notice on her, and hence, the question of her failing to pay the outstanding amounts does not arise. Even though the action of the

respondents was clearly in violation of principles of natural justice, the petitioner made representations to drop the proceedings and later, she filed an appeal before the 2nd respondent. However, no appeal as contemplated under the provisions of the Act lies to the proceedings initiated by the 3rd respondent, and hence, her case was not entertained. Having no other alternative remedy, the petitioner approached this Court.

27. Certain averments were also made in paras 9, 10 and 11 of the reply-affidavit. The proceedings, the correspondence, the letters and also the notifications had been placed before this Court.

28. The writ petitioner also filed certain third party affidavits like that of T.V.Rama Chandra Rao and D.Poli Reddy etc., who sworn such affidavits to explain as to how the petitioner had been maintaining the temple in good condition and as to how the endowment authorities had acted in high-handed manner.

29. The averments made in the affidavit filed in support of W.P.No.25715 of 2007 are also in similar lines as in the writ petition already referred to above. The purchase of the property and the nature of the income also had been averred. It is also stated while she had been maintaining the temple in peaceful manner, on 17.8.2007 the 3rd respondent forcibly entered into the temple and served letters upon the watchman, wherein it was stated that the temple is published under section 6 (b) (ii) of Act, and thus, the subject temple was governed under the provisions of the Act and that as per Section 57 (1) and (2) of the Act every trustee of Religious and Charitable Institution should submit budget estimates 90 days before the commencement of the financial year to the 1st respondent. But, so far, the petitioner had not submitted the budget estimates and income tax returns. The interference into the affairs of the temple and forcibly obtaining the signature of the petitioner by the 3rd respondent had also been averred.

30. It is also further averred that even according to the Act, if the temple is published in gazette notification, the notification should have been served on the petitioner, and after receiving her explanation, the process under Act come into operation. Without observing the norms and rules laid down under the Act, the respondents entered into the premises, which is illegal. At that juncture, having no other alternative remedy, the petitioner approached this Court and filed W.P.No.18884 of 2007 questioning the high-handed acts of the respondents.

31. It is further averred that in the proceedings vide Rc.No.J3/23580/93, dated 13.8.1993, issued by the 2nd respondent, the petitioner's temple was enlisted at Serial No.832 and the same was published in the Official Gazette on 17.1.1994, without intimation or notice to the petitioner, though it is a private temple, and such action of the

2nd respondent is in violation of the Principles of natural justice and in violation of Art.21 of the Constitution of India, and the publication is liable to be quashed. It is also stated that the duty of the 2nd respondent is to give prior notice to the petitioner and conduct an enquiry with regard to the earnings of the temple in accordance with the provisions of the Act. It is further submitted that the respondents clearly stated in their counter in W.P.No.18884 of 2007 that as per the income tax returns filed by the petitioner for the year 1993 to 1994, the total income was shown as Rs.1,14,557/-, which was above Rs.50,000/- per annum, and hence, the same was reclassified and published under Section 6(b)(ii) of the Act, but, according to the petitioner, she is not an income tax assessee and the question of submitting the income tax returns, does not arise.

32. As already referred to supra, the counter-affidavit filed in the prior writ petition had been adopted by the learned Government Pleader for Endowments and the relevant notifications had been placed before this Court.

33. Here is a case where there is no serious controversy relating to the purchase of the property by the writ petitioner up to some extent, and also the construction of the temple by the writ petitioner. But, relating to the question whether it is a private temple or a public temple, there is serious controversy. Further, the question whether the petitioner had alone been maintaining the subject temple with her own funds or not is also put into serious controversy. There is some controversy between the parties relating to the contributions to be made and the other ancillary aspects.

34. Section 57 of the Act deals with the budget of charitable or religious institution or endowments; Section 67 deals with liability of institution or endowment to pay costs; Section 66 deals with assessment of contribution on the trustee; Section 148 deals with recovery of contributions etc. as arrears of land revenue and Section 6 deals with the preparation and publication of list of charitable and religious institutions and endowments on the basis of income. The provision commences with the following words *"The Commissioner shall prepare separately and publish in the prescribed manner, a list of..."*

35. Submissions at length were made that the notifications issued, which had been placed before this Court, were not within the knowledge of the writ petitioner at all and for the first time, the writ petitioner came to know about these notifications only when there was interference with her peaceful management by the endowments department. It is not in serious controversy between the parties that the temple in question would be a religious institution. Section 1(3) of the Act specifies that it applies to all public charitable institutions and endowments, whether registered or not, in accordance with the provisions of this Act, other Wakfs governed by the provisions of the Wakfs Act, 1954. The explanation to Section 1(3) of the Act specifies that in this clause the expression "public charitable institutions and endowments" shall include every charitable institution or endowment

the administration of which is for the time being vested in any Department of Government, or Civil Court, Zilla Praja Parishad, Municipality or local authority, or any company, society, organization, institution or other person." Thus, there cannot be any dispute or controversy relating to the applicability of the provisions of the Act.

36. Reliance was placed on the judgments of the Supreme Court in **A.A.Gopalakrishnan v. Cochin Devaswom Board**[1] and also of this Court in **Rajah of Venkatagiri v. State of A.P.**[2]**.**

37. Though certain facts are not in dispute, in the light of the letters, correspondence and the notifications placed before this Court, this Court is thoroughly satisfied that many of the controversies between the writ petitioner and the endowments department appear to be factual controversies. It is needless to say that a writ Court cannot go into all these controversies effectively. However, from records, it is not clear whether the writ petitioner had voluntarily handed over the management of the temple, or forcibly she had been thrown out as averred by her. This is also seriously disputed question of fact. In the peculiar facts of the case, the writ petitioner is given liberty to pursue the statutory remedies available to her under the provisions of the Act, if she is so advised, relating to the nature of the temple and other ancillary questions. However, in the light of the interim direction granted by this Court, it is stated that the petitioner has been in possession of the residential portion. It is not clear whether the management is being continued by the writ petitioner or by the Manager. However, taking into consideration of the fact that the writ petitioner purchased the property and substantially contributed for the construction of the temple in question, though certain further averments had been specifically denied in the counter-affidavit, such founder of the institution definitely is entitled to at least certain of the privileges ordained by the provisions of the Act. No doubt, the petitioner may have to pursue the appropriate statutory remedies in this regard by making appropriate applications.

38. Be that as it may, in the light of the peculiar facts and circumstances of the case, apart from other statutory remedies, which may be availed by the writ petitioner, and the actions, which had been challenged, of the subordinate authorities of the endowments department, respondents 2 and 3, let the writ petitioner make a representation in detail to the 1st respondent, the Commissioner, Hindu Religious Endowments Department, Tilak Road, Abids, Hyderabad, within a period of four weeks from the date of receipt of a copy of this order and let the 1st respondent conduct appropriate enquiry and take appropriate decision, especially keeping in view the advanced age of the writ petitioner also within a period of eight weeks thereafter. Inasmuch as this Court made an interim order, let the *status quo* be maintained till an appropriate decision is taken by the 1st respondent in this regard.

39. With the above directions, both the writ petitions are disposed of. No order as to costs.

40. Heard the learned counsel.

41. Learned Government Pleader for Endowments, at the time of pronouncement of the order, made a request that in the interest of the institution, let not the petitioners interfere with the day-to-day administration of the Institution.

42. It is made clear that the order of *status quo* granted by this Court not to be interpreted in such a fashion, as far as day-to-day administration of the Institution is concerned. The Authorities of the Endowments Department are entitled to manage the affairs of the Institution in question in accordance with the provisions of the Act.

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P.S.NARAYANA, J

18.12.2007

L.R.Copy to be marked.

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[1] (2007) 7 Supreme Court Cases 482

[2] 1987 (1) ALT 256